



ARMA Update: 13 October 2020

(English Version)

Omnibus Law (Volume 1)

General Overview & How It Would Affect Your Business in Indonesia?

Overview

“The Omnibus Law seems to attract the ease of doing business (EODB) process in Indonesia, by simplifying the licensing process and providing classification for business activities, namely a risk-based approach. A breath of fresh air, that may increase the investment attractiveness throughout the Indonesian archipelagic. At the same time, it is also expected to balance the relationship between employers and employees, as well as maintaining environmental sustainability through some amendments on various laws.”

This ARMA Update addresses an overview of the Job Creation Law (known as “**Omnibus Law**”). We highlight some basic information to understand the Omnibus Law and also some insights related to foreign direct investment (FDI) and the company law.

We will publish a series of ARMA Updates, for specific related issues and/or changes introduced by the Omnibus Law.

Please be informed that our team continuously monitoring the development of the Omnibus Law and its implementing regulations. Until the date of the publication of this ARMA Update, the Omnibus Law has not come into effect, as the President of Indonesia has not yet enacted the law. Thus, the entire analysis herein is based on the publicly available final draft.

To understand further on issues that may affect your business, in relation to the implementation of the Omnibus Law, you may contact us.

What is Omnibus Law?

The House of Representatives of the Republic of Indonesia (“**DPR**”) passed the Omnibus Law on October 5, 2020. The Omnibus Law is a comprehensive law to address complex issues by amending numerous laws and cover various topics at once. The latest final draft of Omnibus Law contains 186 articles and amends and/or affects at least 78 laws.

After DPR passed the Omnibus Law, DPR has 7 (seven) days to submit the Omnibus Law to be enacted by the President of Indonesia. Should the enactment be delayed within 30 days, it will automatically and effectively become a Law constitutionally.

We understand that this concept is relatively new to the Indonesian legal system. Although, this concept has been applied by other countries, such as the United States, Canada, Vietnam, and the Philippines.

What are the main purposes and aims of Omnibus Law?

The purposes and aims for the enactment of Omnibus Law are (i) to create and expand job opportunities by providing facilities, protections, empowerment for cooperative, SMEs, national industry, and trading; (ii) ensure that every citizen can obtain jobs and receive compensation and fair and decent treatment in working relations; (iii) adjustments to various regulatory aspects related to alignment, strengthen and



protection of national industry, SMEs and cooperative; and (iv) adjustments to various regulatory aspects related to enhancing the investment ecosystem, facilitating and accelerating national strategic projects.

What is the Scope of Omnibus Law?

There are 10 (ten) major areas that covered by Omnibus Law, among others:

1. the enhancement of investment and business activities ecosystem;
2. employment;
3. ease, protection, and enforcement of small-medium enterprises (SMEs) and cooperative.
4. ease of doing business;
5. research and innovation support;
6. land procurement;
7. economic area;
8. central government investment and acceleration of national strategic project;
9. implementation of good governance; and
10. sanctions.

How does the Omnibus Law affect the market entry to Indonesia?

❖ The amendment on Investment Law and the status of the Negative List

The Omnibus Law amends some critical articles in Law No. 25 of 2007 regarding Capital Investment (“**Investment Law**”). Under the Investment Law, there are three criteria for foreign investment activities, such as:

1. line of business that is open for investment;
2. line of business that is closed for investment; and
3. line of business that opens with certain requirements (including the maximum foreign ownership or partnership with a local company).

On contrary, the Omnibus Law introduces new criteria for investment that all line of businesses are open for investment except for a certain line of businesses that are closed for investment or activities that only available to the Central Government.

Further, the Omnibus Law also introduces six (6) line of businesses that closed for investment, as follows:

1. narcotics cultivation and industry class I;
2. all forms of gambling and/or casino activities;
3. catching fish species listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
4. utilization or taking of coral and utilization or taking of corals from nature which are used for building materials/limestone/calcium, aquariums, and souvenirs/jewellery, as well as live or dead coral (recent death coral) from nature;
5. chemical weapons manufacturing industry; and
6. industrial chemical industry and industrial ozone-depleting substances.

The Omnibus Law also amends paragraph 4 of Article 12 of the Investment Law on the criteria and requirements for a closed line of businesses or line of businesses that are open with certain requirements (“**Investment Negative List**”). Hence, this provision will be used as the basis for the



Government to amend the Negative List in the Presidential Regulations No. 44 of 2016 (“PR 44/2016”).

Based on the press conference of the Indonesian government dated 7 October 2020, the Presidential Regulation which is a substitution for the PR 44/2016 would later be named the positive list (“**Investment Positive List**”). Accordingly, the Positive List is expected to be issued within 1 (one) month after the enactment of the Omnibus Law.

The amendment of Article 12 of the Investment Law may drastically change the investment climate in Indonesia. The Positive List will only cover (i) the line of business that open (100%) for foreign ownership; (ii) the line of business that closes for investment and (iii) the line of business that will be reserved for the Government.

Further, based on the press conference dated 7 October 2020, it also indicates that there will be around 1,400 lines of businesses that will open for investment based on such a list.

❖ The introduction of Risk-Based Business Licensing (*Perizinan Berusaha Berbasis Risiko*)

The Omnibus Law also introduces new classifications of business licenses which will be based on the determination of the risk level and business scale rating of business activity. The business license will be categorized into three categories: low, medium (medium-low and medium-high), and high.

The determination of risk level and business scale will be determined by considering the following aspects:

1. Health;
2. Safety;
3. Environment; and/or
4. Utilization and management of resources.

We will provide an extensive insight regarding the risk-based business license in the upcoming ARMA Update.

❖ The new treatment on Limited Liability Company and SMEs

In general, the establishment of a limited liability company is much easier, predominantly for local business. Under the Omnibus Law, SMEs may advance their business by establishing a limited liability company whereas there is no minimum capital requirement for such an application. Also, the announcement for the limited liability company in the State Gazette is changed into merely an electronic announcement or via the website.

How to assess the impact of Omnibus Law against your business?

In assessing the potential impact towards the existing businesses or market entry to Indonesia, a business actor should classify their business’ activities and check the relevant provisions in connection with their businesses, including relevant sectoral laws, relevant business licenses, employment-related new provisions, taxation, and other relevant matters.

How is the transition period for Omnibus Law?

The Government initially as stipulated in Omnibus Law, has 3 (three) months period for completing the implementing regulations. Also, particularly for the Government Regulation on norms, standards, procedures, and criteria for Business License it must be completed as a maximum of 3 (three) months.



Nevertheless, the relevant implementing regulations that previously enacted are remaining effective so long as those provisions are not in conflict with the Omnibus Law. In such an event, it must be amended within 3 (three) months.

Further, based on the transitional provision in the Omnibus Law, any existing business license issued before the enactment of the Omnibus Law will be still valid until its expiration and may be adjusted in accordance with the Omnibus Law.

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Disclaimer:

Even though the House of Representative has passed the Omnibus Law on 5 October 2020, we have not received the final text of the Omnibus Law. We prepared this ARMA Update based on the draft Omnibus Law that received from various sources and we assume that the draft that we have received reflects the final version of the Omnibus Law. ARMA Law is waiting for the official document of Omnibus Law; therefore, this ARMA Update is subject to such amendment and will be updated accordingly.

This ARMA Update is the property of ARMA Law and is intended to provide general information and should not be treated as legal advice, nor shall it be relied upon by any party for any circumstance. ARMA Law have no intention to provide specific legal advice with regard to this ARMA Update.